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Paper No. 5

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OFFICE OF PETITIONS

In re Application of
Morgan, et al.
Application No. 10/027,485
Filed: December 21, 2001
Attorney Docket Number: 7976-1005

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the petition filed on April 9, 2002 under 37 CFR §1.47(a).

The petition is **dismissed**.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR §1.47(a)," and should address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventors. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR §1.136(a).

The above-identified application was filed on December 21, 2001, without an executed oath or declaration. Accordingly, on January 30, 2002, a "Notice to File Missing Parts of Application" was mailed, requiring an executed oath or declaration and a \$65.00 surcharge for its late filing.

In response, on April 9, 2002, applicant filed a \$65.00 surcharge, a partially executed oath and the present petition.

A grantable petition under 37 CFR §1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and, (4) a statement of the last known address of the non-signing inventor.

Applicant lacks item (1) as set forth above. Rule 47 applicant indicates an inability to reach inventor Hemsley. However, rule 47 applicant has failed to provide any facts that would prove diligent efforts were made to reach inventor Hemsley. Applicant merely states unsuccessful efforts were made to contact inventor Hemsley via mail and telephone calls. Applicant failed to indicate what was mailed to inventor Hemsley and when it was mailed. Nor did applicant indicate who made phone calls to inventor Hemsley, when they were made and if inventor Hemsley was not available whether messages were left.

Upon renewed petition, rule 47 applicant may wish to supply a statement of facts that

describes with some degree of specificity what efforts were made to reach inventor Hemsley. Copies of documentary evidence such as certified mail receipts and cover letters of instruction may help to establish diligent effort was used to reach inventor Hemsley.

In addition before applicant can be granted rule 47 status, applicant must demonstrate inventor Hemsley was given the opportunity to execute an oath or declaration. Rule 47 applicant has failed to show that inventor Hemsley refused to sign the declaration after having been presented with the application papers. There is no indication application papers were submitted to inventor Hemsley. Before a refusal can be alleged, applicant must demonstrate a bona fide attempt was made to present a copy of application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor. See MPEP 409.03(d).

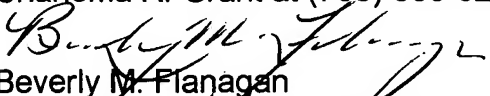
Further correspondence with respect to this matter should be addressed as follows:

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Telephone inquiries related to this decision may be directed to Petitions Attorney Charlema R. Grant at (703) 306-0251.


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